

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**INTERNATIONAL UNION OF ELEVATOR  
CONSTRUCTORS, NO. 1, OF NEW YORK CITY  
AND VICINITY (OTIS ELEVATOR)**

**and**

**Case 29-CB-084077**

**BRIAN KELLY, JR.**

**ORDER**

Otis Elevator Company's petition to revoke subpoena ad testificandum A-950138 issued to Robert Spinnato is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. See *Postal Workers Local 64 (USPS)*, 340 NLRB 912 (2003); *Offshore Mariners United*, 338 NLRB 745 (2002).<sup>1</sup> Further, the Petitioner has failed to

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<sup>1</sup> In any event, we note that the Region previously advised Robert Spinnato, through counsel, of the subject matter of the unfair labor practice charge and the nature of the testimony sought.

Member Miscimarra agrees that the General Counsel has described with sufficient particularity the evidence sought, but solely because the General Counsel's opposition (to the petition to revoke the subpoena) has, at this point, described the nature of the charge (involving the Union's failure to refer the Charging Party for employment through its hiring hall for reasons other than the failure to tender uniformly required initiation fees and periodic dues) and has provided general information regarding the subject matter deemed relevant to the testimony sought from the subpoenaed party. In Member Miscimarra's view, however, the subpoena itself should describe with reasonable particularity the general topic(s) or issue(s) that would be the subject of subpoenaed testimony or other evidence. See Sec. 11(1) of the Act; Sec. 102.31(b) of the Board's Rules. Member Miscimarra believes the requirement of "particularity" requires more than merely giving the case name and number of the proceeding in which the subpoena has been issued. He also notes that the Board has moved in the direction of providing substantially more detail in remedial notices, for example, to "facilitate a better understanding," including hyperlinks and QR codes providing direct electronic access to the Board's decision(s). Cf. *Durham School*

establish any other legal basis for revoking the subpoenas.<sup>2</sup> See generally, *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., August 29, 2014.

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER

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*Services LP*, 360 NLRB No. 85 (2014). Although subpoenas serve a different purpose, Member Miscimarra believes they should provide fair notice to recipients regarding the topic(s) or issue(s) deemed relevant to the testimony or other evidence being sought.

<sup>2</sup> The Petitioner's argument that the Board was without authority to issue the subpoena because it lacked a quorum at that time is without merit. Sec. 11(1) of the Act states that "[t]he Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application." Here, Chairman Pearce issued the subpoena in accordance with the Act.

Further, the Petitioner's argument that the appointment of James G. Paulsen as the Regional Director of Region 29 was invalid because the Board lacked a quorum at that time is without merit. Paulsen was appointed as Regional Director on December 28, 2011, at a time when the Board had a quorum.